

100TH CONGRESS
1ST SESSION

H. R. 2970

To amend title XVIII of the Social Security Act to provide protection against catastrophic medical expenses under the medicare program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 1987

Mr. MICHEL introduced the following bill; which was referred jointly to the Committees on Ways and Means and Energy and Commerce

A BILL

To amend title XVIII of the Social Security Act to provide protection against catastrophic medical expenses under the medicare program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—MEDICARE CATA-**
4 **STROPHIC ILLNESS COVERAGE**
5 **ACT**

6 **SECTION 101. SHORT TITLE AND REFERENCES IN TITLE.**

7 (a) **SHORT TITLE.**—This title may be cited as the
8 “Medicare Catastrophic Illness Coverage Act”.

1 (b) REFERENCES IN TITLE.—Except as otherwise pro-
2 vided in this title, the amendments in this title apply to the
3 Social Security Act.

4 SEC. 102. REVISIONS IN HOSPITAL INSURANCE PROGRAM.

5 (a) UNLIMITED HOSPITAL BENEFITS.—Section
6 1812(a) (42 U.S.C. 1395d(a)) is amended—

7 (1) by amending paragraph (1) to read as follows:

8 “(1) inpatient hospital services;”, and

9 (2) in paragraph (2), by striking “spell of illness”
10 and inserting “year”.

11 (b) OMITTING SPELL OF ILLNESS LIMITS.—Section
12 1812(b) (42 U.S.C. 1395d(b)) is amended—

13 (1) in the matter preceding paragraph (1)—

14 (A) by striking “spell of illness” and insert-
15 ing “year”, and

16 (B) by striking “(subject to subsection (c))”;

17 (2) by striking paragraph (1);

18 (3) in paragraph (2), by striking “spell” each
19 place it appears and inserting “year”; and

20 (4) by redesignating paragraphs (2) and (3) as (1)
21 and (2), respectively.

22 (c) REPEALING SPECIAL RULE FOR CERTAIN PA-
23 TIENTS IN PSYCHIATRIC HOSPITALS.—Section 1812(c) (42
24 U.S.C. 1395d(c)) is repealed.

1 (d) CONFORMING AMENDMENT.—Section 1812(e) (42
2 U.S.C. 1395d(e)) is amended by striking “subsections (b) and
3 (c), inpatient hospital services, inpatient psychiatric hospital
4 services,” and inserting “subsection (b), inpatient psychiatric
5 services”.

6 (e) CONFORMING AMENDMENT.—Section 1812(g) (42
7 U.S.C. 1395d(g)) is amended by striking “definition of ‘spell
8 of illness’, and for definitions of other” and inserting “defini-
9 tions of”.

10 (f) APPLICATION OF HOSPITAL DEDUCTIBLE.—Sec-
11 tion 1813(a) (42 U.S.C. 1395e(a)) is amended—

12 (1) in the first sentence of paragraph (1), by strik-
13 ing “any spell of illness” and inserting “each of the
14 first two admissions in a year”;

15 (2) by striking the second sentence of paragraph
16 (1); and

17 (3) by striking paragraph (3).

18 (g) CONFORMING AMENDMENT.—Section 1813(b)(3)
19 (42 U.S.C. 1395e(b)(3)) is amended to read as follows:

20 “(3) The inpatient hospital deductible for a year shall
21 apply to the deduction under subsection (a)(1) for the year in
22 which the first day of inpatient services occurs in an
23 admission.”.

24 (h) CONFORMING AMENDMENT.—Section 1832(b) (42
25 U.S.C. 1395k(b)) is amended to read as follows:

1 “(b) For definitions of ‘medical and other health serv-
2 ices’ and other terms used in this part, see section 1861.”.

3 (i) **REPEALING DEFINITION OF SPELL OF ILLNESS.**—

4 Section 1861(a) (42 U.S.C. 1395x(a)) is repealed.

5 (j) **CONFORMING AMENDMENT.**—Section 1861(y) (42
6 U.S.C. 1395x(y)) is amended—

7 (1) in paragraph (1), by striking “(except for pur-
8 poses of subsection (a)(2))”;

9 (2) in paragraph (2), by (A) striking “spell of ill-
10 ness” each place it appears and inserting “year” and
11 (B) striking “spell” each place it appears and inserting
12 “year”;

13 (3) by striking paragraph (3), and

14 (4) by renumbering paragraph (4) as (3).

15 (k) **CONFORMING AMENDMENT.**—Section
16 1866(a)(2)(A)(i) (42 U.S.C. 1395cc(a)(2)(A)(i)) is amended by
17 striking “(a)(3), or (a)(4), section 1833(b), or section
18 1861(y)(3)” and inserting “section 1813(a)(4), or section
19 1833(b)”.

20 (l) **EFFECTIVE DATE.**—The amendments made by this
21 section apply to items and services furnished after 1987.

22 **SEC. 103. CEILING FOR BENEFICIARY EXPENSES.**

23 (a) **ENTITLEMENT TO CATASTROPHIC BENEFITS.**—

24 Section 1832(a) (42 U.S.C. 1395k(a)) is amended—

25 (1) by striking “and” at the end of paragraph (1),

1 (2) by substituting “; and” for the period at the
2 end of paragraph (2), and

3 (3) by adding at the end the following:

4 “(3) entitlement to have payment made to him or
5 on his behalf (subject to the provisions of this part) of
6 the amounts specified in section 1833(a)(5).”.

7 (b) LIMIT ON COST SHARING.—Section 1833(a) (42
8 U.S.C. 1395l(a)) is amended—

9 (1) by striking “and” at the end of paragraph (3);

10 (2) by striking the period at the end of paragraph
11 (4) and inserting “; and”; and

12 (3) by adding at the end the following new para-
13 graph:

14 “(5) the amounts by which the beneficiary cost
15 sharing amounts for items and services furnished in a
16 year (but substituting that period of the last quarter of
17 the preceding year that occurs before the cost sharing
18 limitation for that preceding year is reached (if at all)
19 for the last quarter of the year in question, if the
20 amounts are greater) exceed the cost sharing limitation
21 for that year.”.

22 (c) INCLUDING DEDUCTIBLE IN COST SHARING
23 LIMIT.—The first sentence of section 1833(b) (42 U.S.C.
24 1395l(b)) is amended—

25 (1) by striking “and” at the end of clause (3), and

1 (2) by inserting before the period the following: “,
2 and (5) such deductible shall be included in the benefi-
3 ciary cost sharing amounts”.

(d) CONFORMING AMENDMENT.—Section 1833(d) (42 U.S.C. 1395l(d)) is amended by inserting “(except as provided by subsection (a)(5))” before the period.

(e) ANNUAL DETERMINATION OF COST SHARING LIM-
ITATION.—Section 1833 is further amended by adding at the
end the following new subsection:

10 “(m) The Secretary shall, during September of 1988
11 and of each year thereafter, determine and promulgate the
12 cost sharing limitation (as defined in section 1861(a)(2)) for
13 the succeeding calendar year.”.

(f) BENEFICIARY COST SHARING AMOUNTS AND COST SHARING LIMITATIONS DEFINED.—Section 1861 (42 U.S.C. 1395x), as amended by section 102(i) of this title, is further amended by inserting before subsection (b) the following:

19 “Beneficiary Cost Sharing Amounts; Cost Sharing
20 Limitation

21 “(a)(1) The term ‘beneficiary cost sharing amounts’
22 means the amounts of expenses that an individual who is
23 covered under the insurance program established by part B
24 incurs that are—

1 “(A) amounts specified in the first two sentences
2 of section 1866(a)(2)(A) (but for an individual who is
3 not also covered under the insurance program estab-
4 lished by part A, only those amounts for items and
5 services covered under part B), and

6 “(B) amounts equal to the difference between the
7 total amounts that constitute payment in full under
8 part B when a physician or other entity that is not a
9 provider of services accepts (or would accept) assign-
10 ment (or otherwise agrees to accept a specified
11 amount) and the amounts payable from the Federal
12 Supplementary Medical Insurance Trust Fund for those
13 items and services (other than under section
14 1833(a)(5)).

15 “(2) The term ‘cost sharing limitation’ means—

16 “(A) for 1988, \$2,000, and

17 “(B) for 1989 and later years, \$2,000 increased
18 (or decreased) by the percentage increase (or decrease)
19 in total per capita expenses of the Federal Hospital In-
20 surance Trust Fund and the Federal Supplementary
21 Medical Insurance Trust Fund for the second preceding
22 year over those for 1986 (but, if not a multiple of \$10,
23 rounded to the nearest multiple, or, if midway between
24 two multiples, rounded to the next higher).”.

1 (g) LIMITATION ON ADDITIONAL CHARGES WHERE
 2 COST SHARING LIMITATION REACHED.—Section
 3 1866(a)(2)(A) (42 U.S.C. 1395cc(a)(2)(A)) is amended by
 4 adding at the end the following: “A provider of services may
 5 not impose a charge under this subparagraph to the extent
 6 payment is made to the provider of services under section
 7 1832(a)(3).”.

8 (h) EFFECTIVE DATE.—The amendments made by this
 9 section apply to items and services furnished after 1987 (and
 10 do not, for purposes of the parenthetical clause in section
 11 1833(a)(5) of the Social Security Act, apply to items and
 12 services furnished during the last three months of 1987).

13 SEC. 104. INCREASE IN SUPPLEMENTARY MEDICAL INSUR-
 14 ANCE PREMIUM.

15 (a) REVISION OF PREMIUM.—Section 1839(a)(1) (42
 16 U.S.C. 1395r(a)(1)) is amended to read as follows:

17 “SEC. 1839. (a)(1) The Secretary shall, during Septem-
 18 ber of 1987 and of each year thereafter, determine the
 19 monthly actuarial basic rate and the monthly actuarial cata-
 20 strophic illness rate for enrollees age 65 and over which shall
 21 be applicable for the succeeding calendar year. The monthly
 22 actuarial basic rate shall be the amount the Secretary esti-
 23 mates to be necessary so that the aggregate amount for the
 24 calendar year with respect to those enrollees age 65 and over
 25 will equal one-half of the total of the benefits and administra-

1 tive costs which he estimates will be payable from the Feder-
2 al Supplementary Medical Insurance Trust Fund for services
3 performed and related administrative costs incurred in such
4 calendar year with respect to such enrollees (excluding bene-
5 fits payable under section 1833(a)(5)). The monthly actuarial
6 catastrophic illness rate shall be the amount the Secretary
7 estimates to be necessary so that the aggregate amount for
8 the calendar year with respect to those enrollees age 65 and
9 over will equal the total of the benefits and administrative
10 costs which he estimates will be payable from the Federal
11 Supplementary Medical Insurance Trust Fund for services
12 performed and related administrative costs incurred in such
13 calendar year with respect to such enrollees under section
14 1833(a)(5), and from the Federal Hospital Insurance Trust
15 Fund for the changes (under sections 102 and 103 of the
16 Medicare Catastrophic Illness Coverage Act) in services per-
17 formed in such calendar year with respect to individuals age
18 65 and over who are covered under the insurance program
19 established by part A. In calculating the monthly actuarial
20 rates, the Secretary shall include appropriate amounts for a
21 contingency margin.”.

22 (b) COMPUTATION OF ACTUARIAL AMOUNT FOR DIS-
23 ABLED ENROLLEES.—Section 1839(a)(4) (42 U.S.C.
24 1395r(a)(4)) is amended to read as follows:

1 “(4) The Secretary shall also, during September of 1987
2 and of each year thereafter, determine the monthly actuarial
3 basic rate and the monthly actuarial catastrophic illness rate
4 for disabled enrollees under age 65 which shall be applicable
5 for the succeeding calendar year. The monthly actuarial basic
6 rate shall be the amount the Secretary estimates to be neces-
7 sary so that the aggregate amount for the calendar year with
8 respect to disabled enrollees under age 65 will equal one-half
9 of the total of the benefits and administrative costs which he
10 estimates will be payable from the Federal Supplementary
11 Medical Insurance Trust Fund for services performed and re-
12 lated administrative costs incurred in such calendar year with
13 respect to such enrollees (excluding benefits payable under
14 section 1833(a)(5)). The monthly actuarial catastrophic ill-
15 ness rate shall be the amount the Secretary estimates to be
16 necessary so that the aggregate amount for the calendar year
17 with respect to disabled enrollees under age 65 will equal the
18 total of the benefits and administrative costs which he esti-
19 mates will be payable from the Federal Supplementary Medi-
20 cal Insurance Trust Fund for services performed and related
21 administrative costs incurred in such calendar year with re-
22 spect to such enrollees under section 1833(a)(5), and from the
23 Federal Hospital Insurance Trust Fund for the changes
24 (under sections 102 and 103 of the Medicare Catastrophic
25 Illness Coverage Act) in services performed in such calendar

1 year with respect to disabled individuals under age 65 who
2 are covered under the insurance program established by part
3 A. In calculating the monthly actuarial rates, the Secretary
4 shall include appropriate amounts for a contingency
5 margin.”.

6 (c) TREATMENT OF ADDITIONAL PREMIUM.—Section
7 1841 (42 U.S.C. 1395t) is amended by adding at the end the
8 following:

9 “(j) The portion of the premium amounts that is deter-
10 mined under section 1839(a)(3)(A) shall be treated as a sepa-
11 rate account. Amounts paid under section 1832(a)(3) or
12 transferred under subsection (k) of this section shall come
13 from that portion.

14 “(k) There shall be transferred from time to time from
15 the Trust Fund to the Federal Hospital Insurance Trust
16 Fund amounts from the premium under this part that are
17 attributable to the changes (under sections 102 and 103 of
18 the Medicare Catastrophic Illness Coverage Act) in services
19 performed in such calendar year with respect to individuals
20 who are covered under the insurance program established by
21 part A.”.

22 (d) EXTENDING FOR 2 YEARS PART B PREMIUM
23 BASIC PREMIUM AT 25 PERCENT OF PROGRAM COSTS.—
24 Section 1839 (42 U.S.C. 1395r) is amended—

1 (1) in subsection (e), by striking “1989” and in-
2 serting “1991”,

3 (2) in subsection (f)(1), by striking “or 1987” and
4 inserting “1987, 1988, or 1989”, and

5 (3) in subsection (f)(2), by striking “or 1988” and
6 inserting “1988, 1989, or 1990”.

7 (e) CONFORMING AMENDMENTS.—(1) Section
8 1839(a)(2) (42 U.S.C. 1395r(a)(2)) is amended by striking
9 “1983” and inserting “1987”.

10 (2) Section 1839(a)(3) (42 U.S.C. 1395r(a)(2)) is
11 amended—

12 (A) in the first sentence, by striking “1983” and
13 inserting “1987”,

14 (B) by amending the second sentence to read as
15 follows:

16 “The monthly premium shall (except as otherwise provided
17 in subsection (e)) be equal to the sum of—

18 “(A) a weighted average of the monthly actuarial
19 catastrophic illness rate for enrollees age 65 and over,
20 determined according to paragraph (1) of this subsec-
21 tion, and that rate for disabled enrollees under age 65,
22 determined according to paragraph (4) of this subsec-
23 tion, for that calendar year, and

24 “(B) the smaller of—

1 “(i) the monthly actuarial basic rate for en-
2 rollees age 65 and over, determined according to
3 paragraph (1) of this subsection, for that calendar
4 year, or

5 “(ii) the monthly payment rate most recently
6 promulgated by the Secretary under this para-
7 graph, increased by a percentage determined as
8 follows: The Secretary shall ascertain the primary
9 insurance amount computed under section
10 215(a)(1), based upon average indexed monthly
11 earnings of \$900, that applied to individuals who
12 became eligible for and entitled to old-age insur-
13 ance benefits on November 1 of the year before
14 the year of the promulgation. He shall increase
15 the monthly premium rate by the same percentage
16 by which that primary insurance amount is in-
17 creased when, by reason of the law in effect at
18 the time the promulgation is made, it is so com-
19 puted to apply to those individuals for the follow-
20 ing November 1.”, and

21 (C) in the third sentence, by striking “amount of
22 an adequate actuarial rate for enrollees age 65 and
23 over as provided in paragraph (1)” and inserting
24 “amounts of adequate actuarial basic and catastrophic

1 illness rates for enrollees as provided in paragraphs (1)
2 and (4)";

3 (3) Section 1839(e)(1) (42 U.S.C. 1395r(e)(1)) is
4 amended—

5 (A) by striking "monthly premium" and inserting
6 "portion of the monthly premium otherwise determined
7 under subsection (a)(3)(B)", and

8 (B) by inserting "basic" after "actuarial".

9 (4) Section 1839(f)(1) (42 U.S.C. 1395r(f)(1)) is amend-
10 ed by striking "1985, 1986, or 1987, the monthly premium"
11 and inserting "1987, the portion of the monthly premium
12 otherwise determined under subsection (a)(3)(B)".

13 (5) Section 1839(f)(2) (42 U.S.C. 1395r(f)(2)) is
14 amended—

15 (A) in the matter preceding subparagraph (A), by
16 striking "1986, 1987, or" and by striking "monthly
17 premium" the second place it appears and inserting
18 "portion of the monthly premium otherwise determined
19 under subsection (a)(3)(B)", and

20 (B) in subparagraph (A), by striking "monthly
21 premium amount determined under subsection (a)(2)"
22 each place it appears and inserting "portion of the
23 monthly premium amount determined under subsection
24 (a)(3)(B)".

1 (6) Subparagraphs (A)(i) and (B)(i) of section 1844(a)(1)
2 (42 U.S.C. 1395w(a)(1)) are each amended by striking “twice
3 the dollar amount of the actuarially adequate rate” and in-
4 serting “the dollar amount of the actuarially adequate cata-
5 strophic illness rate and twice the dollar amount of the actu-
6 arially adequate basic rate”.

7 (7) Section 1876(a)(5) (42 U.S.C. 1395mm(a)(5)) is
8 amended—

9 (A) in the matter preceding subparagraph (A), by
10 striking “200 percent of”, and

11 (B) in subparagraphs (A)(ii) and (B)(ii), by striking
12 “monthly actuarial rate” and inserting “the sum of the
13 monthly actuarial catastrophic illness rate and twice
14 the monthly actuarial basic rate”.

15 **SEC. 105. EXTENDING HOME HEALTH SERVICES.**

16 (a) **IN GENERAL.**—Section 1861(m) (42 U.S.C.
17 1395x(m)) is amended by adding at the end the following new
18 sentence: “For purposes of paragraphs (1) and (4) and sec-
19 tions 1814(a)(2)(C) and 1835(a)(2)(A), nursing care and home
20 health aide services shall be considered to be provided or
21 needed on an ‘intermittent’ basis if they are provided or
22 needed less than 7 days each week and, in the case they are
23 provided or needed for 7 days each week, if they are provided
24 or needed for an initial period of up to 35 consecutive days,
25 and for a subsequent period based on a physician certification

1 of exceptional circumstances requiring such services on such
2 a basis.”.

3 (b) ADDITIONAL PREMIUM FOR CERTAIN DAILY
4 HOME HEALTH SERVICES.—Section 1839 (42 U.S.C.
5 1395r) is amended by adding at the end the following new
6 subsection:

7 “(g)(1)(A) The Secretary shall, during September of
8 each year (beginning with 1989), determine—

9 “(i) the total of the benefits and administrative
10 costs which he estimates will be paid from the Federal
11 Supplementary Medical Insurance Trust Fund in the
12 succeeding calendar year for supplemental daily home
13 health services (as defined in paragraph (4)) and related
14 administrative costs with respect to such enrollees, and

15 “(ii) a monthly actuarial rate for supplemental
16 daily home health services which shall be applicable for
17 the succeeding calendar year, which rate shall, subject
18 to subparagraph (B)(ii), be the rate which the Secretary
19 estimates to be necessary so that the aggregate
20 amount of the increase in premiums collected or paid
21 under this subsection for such year will equal 100 per-
22 cent of the total determined under clause (i) for that
23 year.

24 “(B)(i) In September of each year (beginning with 1990)
25 the Secretary shall determine—

1 “(I) the aggregate amount of the monthly premi-
2 um increases collected or received under paragraph (2)
3 during the previous year;

4 “(II) the total of the benefits and administrative
5 costs which the Secretary determines were paid in the
6 previous year from the Federal Supplementary Medical
7 Insurance Trust Fund for supplemental daily home
8 health services and related administrative costs; and

9 “(III) whether the amount described in subclause
10 (I) is greater or less than 100 percent of the total de-
11 scribed in subclause (II).

12 “(ii) If the Secretary determines under clause (i)(III) in
13 a year that there was a surplus or deficit described in that
14 clause in the previous year, the Secretary shall adjust the
15 monthly actuarial rate otherwise determined under subpara-
16 graph (A)(ii) for the succeeding year so as to reduce or in-
17 crease, respectively, the aggregate amount of the monthly
18 premium increases that otherwise would be collected or re-
19 ceived under paragraph (2) in that succeeding year by the
20 amount of such surplus or deficit, respectively.

21 “(2) Notwithstanding any other provision of this section
22 (except as provided in subsections (b) and (f)), the monthly
23 premium of each individual enrolled under this part for each
24 month in a year after December 1988 shall be increased by
25 the monthly actuarial rate determined according to paragraph

1 (1) for that year; except that if the increase determined under
 2 this paragraph is not a multiple of 10 cents, it shall be round-
 3 ed to the nearest multiple of 10 cents.

4 “(3) There shall be transferred from time to time from
 5 the Trust Fund to the Federal Hospital Insurance Trust
 6 Fund amounts from the additional premium under this sub-
 7 section that are attributable to the supplemental daily home
 8 health services for which payments are made under part A.

9 “(4) In this subsection, the term ‘daily home health
 10 services’ means home health services which are provided on
 11 a daily basis pursuant to the last sentence of section
 12 1861(m).”.

13 (c) CONFORMING AMENDMENTS.—Section 1839 (42
 14 U.S.C. 1395r) is amended—

15 (1) in the second sentence of subsection (a)(1), by
 16 inserting “(other than costs relating to daily home
 17 health services (as defined in section 1839(g)(4))”
 18 before the period;

19 (2) in subsection (a)(2), by striking “and (e)” and
 20 inserting “, (e), and (g)”;

21 (3) in subsection (a)(3), by striking “subsection
 22 (e)” and inserting “subsections (e) and (g)”; and

23 (4) in the second sentence of subsection (a)(4), by
 24 inserting “(other than costs relating to daily home

1 health services (as defined in section 1839(g)(4))”
2 before the period.

3 (d) EFFECTIVE DATES.—(1) The amendment made by
4 subsection (a) shall apply to services furnished on or after
5 January 1, 1989.

6 (2) The amendments made by subsections (b) and (c)
7 shall apply to monthly premiums for months beginning with
8 January 1989.

9 SEC. 106. MEDICAID COVERAGE OF PRESCRIPTION DRUGS
10 FOR LOW INCOME ELDERLY INDIVIDUALS.

11 (a) REQUIRING MEDICAID COVERAGE OF PRESCRIP-
12 TION DRUGS FOR LOW INCOME ELDERLY INDIVIDUALS.—
13 Section 1902 (42 U.S.C. 1396a) is amended—

14 (1) in subsection (a)(10)—

15 (A) by striking “and” at the end of subpara-
16 graph (D),

17 (B) by inserting “and” at the end of subpara-
18 graph (E), and

19 (C) by inserting after subparagraph (E) the
20 following new subparagraph:

21 “(F) subject to subsection (p)(3), for making
22 medical assistance available for prescription drugs
23 for qualified prescription drug beneficiaries (as de-
24 fined in subsection (p)(1));”;

1 (2) by redesignating the subsection (l), added by
2 section 3(b) of Public Law 99-643, as subsection (o);
3 and

4 (3) by adding at the end the following new sub-
5 section:

6 “(p)(1) In this title, the term ‘qualified prescription drug
7 beneficiary’ is an individual—

8 “(A) who is 65 years of age or older, and

9 “(B) whose income does not exceed 150 percent
10 of the official poverty line (as defined by the Office of
11 Management and Budget, and revised annually in ac-
12 cordance with section 673(2) of the Omnibus Budget
13 Reconciliation Act of 1981) applicable to a family of
14 the size involved.

15 “(2) Income under this paragraph shall be determined
16 under a methodology recognized by the State consistent with
17 subparagraph (C)(ii), which methodology may not be more
18 restrictive or less generous to an individual than the method-
19 ology used under section 1612 for purposes of the supplemen-
20 tal security income program.

21 “(C) Notwithstanding subsection (a)(17), for qualified
22 prescription drug beneficiaries described in paragraph (1) who
23 are covered under the State plan by virtue of subsection
24 (a)(10)(F)—

1 “(i) the income standard to be applied is the
2 income standard described in paragraph (1)(B), and

3 “(ii) except as provided in section 1612(b)(4)(B)(ii),
4 costs incurred for medical care or for any other type of
5 remedial care shall not be taken into account in deter-
6 mining income.

7 Any different treatment provided under this paragraph for
8 such individuals shall not, because of subsection (a)(10) or
9 (a)(17), require or permit such treatment for other
10 individuals.

11 “(3) In the case of a State (other than the 50 States and
12 the District of Columbia), the requirement stated in section
13 1902(a)(10)(F) shall be optional.”

14 (b) **EFFECTIVE DATE OF INDIVIDUAL’S BENEFITS.**—
15 Section 1902(e) (42 U.S.C. 1396a(e)) is amended by adding
16 at the end the following new paragraph:

17 “(10) If an individual is determined to be eligible for
18 medical assistance because of subsection (a)(10)(F), such de-
19 termination shall apply to medical assistance for prescribed
20 drugs furnished after the end of the month in which the de-
21 termination first occurs. Such determination shall be consid-
22 ered to be valid for a period of at least 6 months.”.

23 (c) **BENEFIT LIMITED TO PRESCRIPTION DRUGS.**—
24 Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended, in

1 the matter after subparagraph (F) (as inserted by subsection
2 (a))—

3 (1) by striking “and” before “(IX)” and inserting
4 a comma, and

5 (2) by inserting before the semicolon at the end
6 the following: “, and (X) the medical assistance made
7 available to an individual pursuant to subparagraph (F)
8 shall be limited to the medical assistance for prescribed
9 drugs of the same amount, duration, and scope as the
10 medical assistance made available for prescribed drugs
11 to individuals described in subparagraph (A)(i), except
12 that such assistance shall be subject to an annual de-
13 ductible of \$50 for each individual”.

14 (d) CONFORMING AND TECHNICAL AMENDMENTS.—

15 (1) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10))
16 is amended—

17 (A) in subparagraph (A), in the matter before
18 clause (i), by inserting “, (12)(A),” after “(5)”;

19 (B) in subparagraph (C)—

20 (i) in the matter before clause (i), by
21 striking “or (E)” and inserting “(E), or (F)”,
22 and

23 (ii) in clause (iv), by inserting
24 “, (12)(A),” after “(5)”;

1 (B) in subclause (VIII) in the matter follow-
2 ing subparagraph (F), by striking “described in
3 section 1905(p)(1)” and inserting “pursuant to
4 subparagraph (E)”.

5 (2) Section 1905(a) (42 U.S.C. 1396d(a)) is
6 amended—

7 (A) in the matter before subdivision (i), by in-
8 serting “or in the case of such assistance fur-
9 nished pursuant to section 1902(a)(10)(F) to a
10 qualified prescription drug beneficiary described in
11 section 1902(p)(1), if provided after the month in
12 which the individual is determined to be such an
13 individual” after “makes application for assist-
14 ance”, and

15 (B) in paragraph (12), by striking “(12) pre-
16 scribed drugs, dentures, and prosthetic devices;
17 and” and inserting “(12)(A) prescribed drugs, (B)
18 dentures and prosthetic devices, and (C)”.

19 (3) Section 1905(p)(1)(B) (42 U.S.C.
20 1396a(p)(1)(B)) is amended by inserting “(other than as
21 a qualified prescription drug beneficiary described in
22 section 1902(p)(1))” after “under the plan”.

23 (4) Section 1916 (42 U.S.C. 1395o) is amended
24 by adding at the end the following new subsection:

1 “(e) Notwithstanding the previous provisions of this sec-
2 tion, with respect to medical assistance made available to an
3 individual pursuant to section 1902(a)(10)(F) (relating to pre-
4 scription drug coverage for certain low income elderly indi-
5 viduals), the State plan shall provide for an annual deductible
6 of \$50 for each individual.”.

7 (e) STATE OPERATING UNDER DEMONSTRATION
8 PROJECT.—As a condition for the continued approval of a
9 waiver under section 1115(a) of the Social Security Act for a
10 State’s provision of medical assistance on or after January 1,
11 1989, the State must provide for medical assistance with re-
12 spect to prescribed drugs for qualified prescription drug bene-
13 ficiaries (described in section 1902(p)(1) of such Act) in a
14 reasonable amount, duration, and scope (which is not less
15 than the amount, duration, and scope made available to indi-
16 viduals described in section 1902(a)(10)(A)(i)) after they have
17 met an annual deductible of \$50 for each individual.

18 (f) EFFECTIVE DATE.—(1) The amendments made by
19 this section apply (except as provided under paragraph (2)) to
20 payments under title XIX of the Social Security Act for cal-
21 endar quarters beginning on or after January 1, 1988, with-
22 out regard to whether or not final regulations to carry out
23 such amendments have been promulgated by such date.

24 (2) In the case of a State plan for medical assistance
25 under title XIX of the Social Security Act which the Secre-

1 tary of Health and Human Services determines requires
 2 State legislation (other than legislation appropriating funds)
 3 in order for the plan to meet the additional requirements im-
 4 posed by the amendments made by this section, the State
 5 plan shall not be regarded as failing to comply with the re-
 6 quirements of such title solely on the basis of its failure to
 7 meet these additional requirements before the first day of the
 8 first calendar quarter beginning after the close of the first
 9 regular session of the State legislature that begins after the
 10 date of the enactment of this Act.

11 SEC. 107. PROTECTION OF INCOME AND RESOURCES OF
 12 COUPLE FOR MAINTENANCE OF COMMUNITY
 13 SPOUSE.

14 (a) IN GENERAL.—Title XIX is amended—

15 (1) by redesignating section 1921 as section 1922,
 16 and

17 (2) by inserting after section 1920 the following
 18 new section:

19 “TREATMENT OF INCOME AND RESOURCES FOR CERTAIN
 20 INSTITUTIONALIZED SPOUSES

21 “SEC. 1921. (a) SPECIAL TREATMENT FOR INSTITU-
 22 TIONALIZED SPOUSES.—

23 “(1) SUPERSEDES OTHER PROVISIONS.—In de-
 24 termining the eligibility for medical assistance of an in-
 25 stitutionalized spouse (as defined in subsection (g)(1)),
 26 the provisions of this section supersede any other pro-

1 vision of this title (including sections 1902(a)(17) and
2 1902(f)) which is inconsistent with them.

3 “(2) NO COMPARABLE TREATMENT REQUIRED.—
4 Any different treatment provided under this section for
5 institutionalized spouses shall not, by reason of para-
6 graph (10) or (17) of section 1902(a), require such
7 treatment for other individuals.

8 “(3) DOES NOT AFFECT CERTAIN DETERMINA-
9 TIONS.—Except as this section specifically provides,
10 this section does not apply to—

11 “(A) the determination of what constitutes
12 income or resources, or

13 “(B) the methodology and standards for de-
14 termining and evaluating income and resources.

15 “(4) ELECTION TO USE OTHER RULES.—An in-
16 stitutionalized spouse may elect not to have this sec-
17 tion (other than subsection (c)) apply but to have the
18 spouse’s resources and income determined under the
19 law, practice, or policy of the plan (whether approved
20 or not) in effect on March 1, 1987, except to the
21 extent inconsistent with subsection (c).

22 “(5) APPLICATION IN CERTAIN STATES AND
23 TERRITORIES.—

24 “(A) APPLICATION IN STATES OPERATING
25 UNDER DEMONSTRATION PROJECTS.—In the

1 case of any State which is providing medical as-
2 sistance to its residents under a waiver granted
3 under section 1115, the Secretary shall require
4 the State to meet the requirements of this section
5 in same manner as the State would be required to
6 meet such requirement if the State had in effect a
7 plan approved under this title XIX.

8 “(B) NO APPLICATION IN COMMON-
9 WEALTHS AND TERRITORIES.—This section shall
10 only apply to a State that is one of the 50 States
11 or the District of Columbia.

12 “(b) RULES FOR TREATMENT OF INCOME.—

13 “(1) SEPARATE TREATMENT OF INCOME.—
14 During any month in which an institutionalized spouse
15 is in the institution, no income of the community
16 spouse shall be deemed available to the institutional-
17 ized spouse.

18 “(2) ATTRIBUTION OF INCOME.—In determining
19 the income of an institutionalized spouse or community
20 spouse, except as otherwise provided in this section
21 and regardless of any State laws relating to community
22 property or the division of marital property, the follow-
23 ing rules apply:

24 “(A) NON-TRUST PROPERTY.—Subject to
25 subparagraphs (C) and (D), in the case of income

1 not from a trust, unless the instrument providing
2 the income otherwise specifically provides—

3 “(i) if payment of income is made solely
4 in the name of the institutionalized spouse or
5 the community spouse, the income shall be
6 considered available only to that respective
7 spouse;

8 “(ii) if payment of income is made in
9 the names of the institutionalized spouse and
10 the community spouse, one-half of the
11 income shall be considered available to each
12 of them; and

13 “(iii) if payment of income is made in
14 the names of the institutionalized spouse or
15 the community spouse, or both, and to an-
16 other person or persons, the income shall be
17 considered available to each of the individ-
18 uals named in equal proportional shares.

19 “(B) TRUST PROPERTY.—In the case of a
20 trust—

21 “(i) except as provided in clause (ii),
22 income shall be attributed in accordance with
23 the provisions of this title (including sections
24 1902(a)(17) and 1902(k)), and

1 “(ii) unless the trust otherwise specifi-
2 cally provides—

3 “(I) if payment of income is made
4 solely to the institutionalized spouse or
5 the community spouse, the income shall
6 be considered available only to that re-
7 spective spouse;

8 “(II) if payment of income is made
9 to both the institutionalized spouse and
10 the community spouse, one-half of the
11 income shall be considered available to
12 each of them; and

13 “(III) if payment of income is
14 made to the institutionalized spouse or
15 the community spouse, or both, and to
16 another person or persons, the income
17 shall be considered available to each of
18 such individuals in equal proportional
19 shares.

20 “(C) PROPERTY WITH NO INSTRUMENT.—

21 In the case of income not from a trust in which
22 there is no instrument establishing ownership,
23 subject to subparagraph (D), one-half of the
24 income shall be considered to be available to the

1 institutionalized spouse and one-half to the com-
2 munity spouse.

3 “(D) REBUTTING OWNERSHIP.—The rules
4 of subparagraphs (A) and (C) are superceded to
5 the extent that an institutionalized spouse can es-
6 tablish, by a preponderance of the evidence, that
7 the ownership interests in income are other than
8 as provided under such subparagraphs.

9 “(c) RULES FOR TREATMENT OF RESOURCES.—

10 “(1) COMPUTATION OF SPOUSAL SHARE AT
11 TIME OF INSTITUTIONALIZATION.—There shall be
12 computed (as of the beginning of a continuous period of
13 institutionalization of the institutionalized spouse) a
14 spousal share which is equal to $\frac{1}{2}$ of the value of all
15 the resources held by either the institutionalized
16 spouse, community spouse, or both.

17 “(2) ATTRIBUTION OF RESOURCES AT TIME OF
18 INITIAL ELIGIBILITY DETERMINATION.—In determin-
19 ing the resources of an institutionalized spouse at the
20 time of application for benefits under this title, regard-
21 less of any State laws relating to community property
22 or the division of marital property—

23 “(A) except as provided in subparagraph (B),
24 all the resources held by either the institutional-
25 ized spouse, community spouse, or both, shall be

1 considered to be available to the institutionalized
2 spouse, and

3 “(B) resources held in the name of (or for the
4 sole benefit of) the community spouse shall not be
5 considered to be available to an institutionalized
6 spouse, to the extent that the amount of such re-
7 sources does not exceed the amount computed
8 under subsection (e)(2)(A) (as of the time of appli-
9 cation for benefits) or, if greater, the amount that
10 a court has ordered to be retained by the commu-
11 nity spouse for the support of the community
12 spouse.

13 “(3) SEPARATE TREATMENT OF RESOURCES
14 AFTER ELIGIBILITY FOR BENEFITS ESTABLISHED.—
15 During the continuous period in which an institutional-
16 ized spouse is in an institution and after the month in
17 which an institutionalized spouse is determined to be
18 eligible for benefits under this title, no resources of the
19 community spouse shall be deemed available to the in-
20 stitutionalized spouse.

21 “(4) RESOURCES DEFINED.—In this section, the
22 term ‘resources’ does not include resources excluded
23 under subsection (a) or (d) of section 1613 and does not
24 include resources that would be excluded under section

1 1613(a)(2)(A) but for the limitation on total value de-
2 scribed in such section.

3 “(d) PROTECTING INCOME FOR COMMUNITY
4 SPOUSE.—

5 “(1) ALLOWANCES TO BE OFFSET FROM INCOME
6 OF INSTITUTIONALIZED SPOUSE.—After an institu-
7 tionalized spouse is determined to be eligible for medi-
8 cal assistance, in determining the amount of the
9 spouse’s income that is to be applied monthly to pay-
10 ment for the costs of care in the institution, there shall
11 be deducted from the spouse’s monthly income the fol-
12 lowing amounts in the following order:

13 “(A) A personal needs allowance that is rea-
14 sonable in amount for clothing and other personal
15 needs of the institutionalized spouse and which is
16 not less than \$25 per month.

17 “(B) A community spouse monthly income
18 allowance (as defined in paragraph (2)), but only
19 to the extent income of the institutionalized
20 spouse is made available to (or for the benefit of)
21 the community spouse.

22 “(C) A family allowance, for each family
23 member, equal to at least $\frac{1}{3}$ of the amount by
24 which the amount described in paragraph (3)(A)(i)

1 exceeds the amount of the monthly income of that
2 family member.

3 “(D) Amounts for incurred expenses for med-
4 ical or remedial care for the institutionalized
5 spouse that are not subject to payment by a
6 legally liable third party.

7 In subparagraph (C), the term ‘family member’ only in-
8 cludes minor or dependent children, dependent parents,
9 or dependent siblings of the institutionalized or commu-
10 nity spouse who are residing with the community
11 spouse.

12 “(2) COMMUNITY SPOUSE MONTHLY INCOME AL-
13 LOWANCE DEFINED.—In this section (except as pro-
14 vided in paragraph (6)), the ‘community spouse month-
15 ly income allowance’ for a community spouse is an
16 amount by which—

17 “(A) except as provided in paragraph (4), the
18 minimum monthly maintenance needs allowance
19 (established under and in accordance with para-
20 graph (3)) for the spouse, exceeds

21 “(B) the amount of monthly income other-
22 wise available to the community spouse (deter-
23 mined without regard to such an allowance).

24 “(3) ESTABLISHMENT OF MINIMUM MONTHLY
25 MAINTENANCE NEEDS ALLOWANCE.—

1 “(A) IN GENERAL.—Each State shall estab-
2 lish a minimum monthly maintenance needs allow-
3 ance for each community spouse which, subject to
4 subparagraph (B), is equal to or exceeds—

5 “(i) 150 percent of $\frac{1}{12}$ of the nonfarm
6 income official poverty line (defined by the
7 Office of Management and Budget and re-
8 vised annually in accordance with sections
9 652 and 673(2) of the Omnibus Budget Rec-
10 onciliation Act of 1981) for a family unit of 2
11 members; plus

12 “(ii) an excess shelter allowance (as de-
13 fined in paragraph (5)); plus

14 “(iii) $\frac{1}{2}$ of the amount by which the
15 income available to the institutionalized
16 spouse exceeds the sum of the amounts de-
17 scribed in clauses (i) and (ii).

18 A revision of the official poverty line referred to
19 in clause (i) shall apply to medical assistance fur-
20 nished during and after the second calendar quar-
21 ter that begins after the date of publication of the
22 revision.

23 “(B) CAP ON MINIMUM MONTHLY MAINTEN-
24 NANCE NEEDS ALLOWANCE.—The minimum
25 monthly maintenance needs allowance established

1 under subparagraph (A) may not exceed \$1,500
2 (subject to adjustment under subsection (f)).

3 “(4) NOTICE AND FAIR HEARING.—

4 “(A) NOTICE.—Upon—

5 “(i) a determination of eligibility for
6 medical assistance of an institutionalized
7 spouse, or

8 “(ii) a request by an institutionalized
9 spouse (or community spouse or representa-
10 tive on the spouse’s behalf),

11 each State shall notify the spouse of the amount
12 of the community spouse monthly income allow-
13 ance (described in paragraph (1)(B)), of the
14 amount of any family allowances (described in
15 paragraph (1)(C)), of the method for computing
16 the amount of the community spouse resources al-
17 lowance permitted under subsection (e), and of the
18 spouse’s right to a fair hearing under subpara-
19 graph (B) respecting the determination of the
20 community spouse monthly income allowance.

21 “(B) FAIR HEARING.—If an institutionalized
22 spouse is dissatisfied with a determination of—

23 “(i) the community spouse monthly
24 income allowance because the amount of the
25 minimum monthly maintenance needs allow-

1 ance (established under paragraph (3)) is not
2 adequate to support the community spouse
3 without financial duress, or

4 “(ii) the amount of monthly income oth-
5 erwise available to the community spouse (as
6 applied under paragraph (2)(B)),

7 the institutionalized spouse is entitled to a fair
8 hearing described in section 1902(a)(3) with re-
9 spect to such determination. If the institutional-
10 ized spouse establishes that the minimum monthly
11 maintenance needs allowance is not adequate to
12 support the community spouse without financial
13 duress, there shall be substituted, for the mini-
14 mum monthly maintenance needs allowance in
15 paragraph (2)(A), an amount adequate to support
16 the community spouse without financial duress.

17 “(5) EXCESS SHELTER ALLOWANCE DEFINED.—
18 In paragraph (3)(A)(ii), the term ‘excess shelter allow-
19 ance’ means, for a community spouse, the amount by
20 which the sum of—

21 “(A) the spouse’s expenses for mortgage
22 payment (including principal, interest, taxes, and
23 insurance and, in the case of a condominium or
24 cooperative, required maintenance charge) or rent,
25 and

1 “(B) the standard utility allowance (used by
2 the State under section 5(e) of the Food Stamp
3 Act of 1977) or, if the State does not use such an
4 allowance, the spouse’s actual utility expenses,
5 exceeds 30 percent of the amount described in para-
6 graph (3)(A)(i), except that, in the case of a condomini-
7 um or cooperative, for which a maintenance charge is
8 included under subparagraph (A), any allowance under
9 subparagraph (B) shall be reduced to the extent the
10 maintenance charge includes utility expenses.

11 “(6) COURT ORDERED SUPPORT.—If a court has
12 entered an order against an institutionalized spouse for
13 monthly income for the support of the community
14 spouse, the community spouse monthly income allow-
15 ance for the spouse shall be not less than the amount
16 of the monthly income so ordered.

17 “(e) PERMITTING TRANSFER OF RESOURCES TO COM-
18 MUNITY SPOUSE.—

19 “(1) IN GENERAL.—An institutionalized spouse
20 may, without regard to section 1917, transfer to the
21 community spouse (or to another for the sole benefit of
22 the community spouse) an amount equal to the commu-
23 nity spouse resource allowance (as defined in para-
24 graph (2)), but only to the extent the resources of the

1 institutionalized spouse are transferred to (or for the
2 sole benefit of) the community spouse.

3 “(2) COMMUNITY SPOUSE RESOURCE ALLOW-
4 ANCE DEFINED.—In paragraph (1), the ‘community
5 spouse resource allowance’ for a community spouse is
6 an amount (if any) by which—

7 “(A) the greater of—

8 “(i) \$12,000 (subject to adjustment
9 under subsection (f)), or

10 “(ii) the lesser of (I) the spousal share
11 computed under subsection (c)(1), or (II) 4
12 times the amount described in clause (i), ex-
13 ceeds

14 “(B) the amount of the resources otherwise
15 available to the community spouse (determined
16 without regard to such an allowance).

17 “(3) TRANSFERS UNDER COURT ORDERS.—If a
18 court has entered an order against an institutionalized
19 spouse for the support of the community spouse, sec-
20 tion 1917 shall not apply to amounts of resources
21 transferred pursuant to such order for the support of
22 the spouse of a family member (as defined in subsection
23 (d)(1)).

24 “(f) INDEXING DOLLAR AMOUNTS.—For services fur-
25 nished during a calendar year after 1988, the dollar amounts

1 specified in subsections (d)(3)(B) and (e)(2)(A)(i) shall be in-
 2 creased by the same percentage as the percentage increase in
 3 the consumer price index for all urban consumers (all items;
 4 U.S. city average) between September 1987 and the Septem-
 5 ber before the calendar year involved.

6 “(g) DEFINITIONS.—In this section:

7 “(1) The term ‘institutionalized spouse’ means an
 8 individual who—

9 “(A) is in a hospital, skilled nursing facility,
 10 or intermediate care facility, or who (at the option
 11 of the State) is described in section
 12 1902(a)(10)(A)(ii)(VI), and

13 “(B) is married to a spouse who is not in a
 14 hospital, skilled nursing facility, or intermediate
 15 care facility;

16 but does not include any such individual who is not
 17 likely to meet the requirements of subparagraph (A) for
 18 at least 30 consecutive days.

19 “(2) The term ‘community spouse’ means the
 20 spouse of an institutionalized spouse.”.

21 (b) TAKING INTO ACCOUNT CERTAIN TRANSFERS OF
 22 ASSETS.—Subsection (c) of section 1917 (42 U.S.C. 1396p)
 23 is amended to read as follows:

24 “(c)(1) In order to meet the requirements of this subsec-
 25 tion (for purposes of section 1902(a)(49)(B)), the State plan

1 must provide for a period of ineligibility in the case of an
2 institutionalized individual (as defined in paragraph (3)) who,
3 at any time during the 24-month period immediately before
4 the individual's application for medical assistance under the
5 State plan, disposed of resources for less than fair market
6 value. The period of ineligibility shall begin with the month
7 in which such resources were transferred and the number of
8 months in such period shall be equal to (A) the total uncom-
9 pensated value of the resources so transferred, divided by (B)
10 the average cost, to a private patient at the time of the appli-
11 cation, of nursing home care in the State or, at State option,
12 in the community in which the individual is institutionalized.

13 “(2) An individual shall not be ineligible for medical as-
14 sistance by reason of paragraph (1) to the extent that—

15 “(A) the resources transferred were a home and
16 title to the home was transferred to the individual's
17 spouse or child who is under age 21, or (with respect
18 to State eligible to participate in the State program es-
19 tablished under title XVI) is blind or permanently and
20 totally disabled, or (with respect to States which are
21 not eligible to participate in such program) is blind or
22 disabled as defined in section 1614;

23 “(B) the resources were transferred to (or to an-
24 other for the sole benefit of) the community spouse, as
25 defined in section 1921(g)(2);

1 “(C) a satisfactory showing is made to the State
2 (in accordance with any regulations promulgated by the
3 Secretary) that the individual intended to dispose of the
4 resources either at fair market value, or for other valu-
5 able consideration; and

6 “(D) the State determines that denial of eligibility
7 would work an undue hardship.

8 “(3) In this subsection, the term ‘institutionalized indi-
9 vidual’ means an individual who—

10 “(A) is an inpatient in a skilled nursing facility,
11 intermediate care facility, or other medical institution
12 and

13 “(B) is required, as a condition of receiving serv-
14 ices in such institution under the State plan, to spend
15 for costs of medical care all but a minimal amount of
16 the individual’s income required for personal needs.

17 “(4) A State may not provide for any period of ineligibil-
18 ity for an institutionalized individual due to transfer of re-
19 sources for less than fair market value except in accordance
20 with this subsection.”.

21 (c) CONFORMING AMENDMENT.—Section 1902(a) (42
22 U.S.C. 1396a(a)) is amended—

23 (1) in paragraph (10)(C)(i)(III), by striking “the
24 same” each place it appears and inserting “no more
25 restrictive than the”;

1 (2) by striking “and” at the end of paragraph
2 (46);

3 (3) by striking out the period at the end of the
4 paragraph (47) inserted by section 9407(a) of the Om-
5 nibus Budget Reconciliation Act of 1986 and inserting
6 a semicolon;

7 (4) in the paragraph (47) added by section
8 11005(b) of the Anti-Drug Abuse Act of 1986, by re-
9 designating such paragraph as paragraph (48), by
10 transferring and inserting such paragraph immediately
11 after paragraph (47), and by striking the period and in-
12 serting “; and”;

13 (5) by inserting after paragraph (48) the following
14 new paragraph:

15 “(49)(A) meet the requirements of section 1921
16 (relating to protection of community spouses), and (B)
17 meet the requirement of section 1917(c) (relating to
18 transfer of assets).”; and

19 (6) by adding at the end the following new sen-
20 tence: “For purposes of paragraph (10), methodology is
21 considered to be ‘no more restrictive’ if, using the
22 methodology, additional individuals may be eligible for
23 medical assistance and no individuals who are other-
24 wise eligible are made ineligible for such assistance.”.

1 (d) EFFECTIVE DATE.—(1) The amendments made by
2 this section apply (except as provided under paragraphs (2)
3 and (3)) to payments under title XIX of the Social Security
4 Act for calendar quarters beginning on or after January 1,
5 1988, without regard to whether or not final regulations to
6 carry out such amendments have been promulgated by such
7 date.

8 (2) In the case of a State plan for medical assistance
9 under title XIX of the Social Security Act which the Secre-
10 tary of Health and Human Services determines requires
11 State legislation (other than legislation appropriating funds)
12 in order for the plan to meet the additional requirements im-
13 posed by the amendments made by this section, the State
14 plan shall not be regarded as failing to comply with the re-
15 quirements of such title solely on the basis of its failure to
16 meet these additional requirements before the first day of the
17 first calendar quarter beginning after the close of the first
18 regular session of the State legislature that begins after the
19 date of the enactment of this Act.

20 (3) The amendments made by subparagraphs (A) and (F)
21 of subsection (c)(1) shall apply to medical assistance furnished
22 on or after October 1, 1982.

1 SEC. 108. REPORT ON STUDY OF METHODS TO STRENGTHEN
2 LONG-TERM SOLVENCY OF THE MEDICARE
3 TRUST FUNDS.

4 The Boards of Trustees of the Federal Hospital Insur-
5 ance Trust Fund (established under section 1817 of the
6 Social Security Act) and of the Federal Supplementary Medi-
7 cal Insurance Trust Fund (established under section 1841 of
8 such Act) shall include in their reports to Congress in April
9 1988 an analysis, performed by the Secretary of the Treas-
10 ury in consultation with the Secretary of Health and Human
11 Services, of the options to strengthen the long-term solvency
12 of such Trust Funds. Such analysis shall include a study of
13 the effectiveness of the health care savings accounts (de-
14 scribed in H.R. 955, as introduced in the 100th Congress)
15 and other options to transfer the financing of health care in
16 retirement to the private sector.

17 SEC. 109. EFFECTIVE DATE.

18 Except as otherwise provided in this title, the amend-
19 ments made by this title apply to items and services furnished
20 after, and premiums for months after, 1987 (and do not, for
21 purposes of the parenthetical clause in section 1833(a)(5) of
22 the Social Security Act, apply to items and services furnished
23 during the last three months of 1987).

1 **TITLE II—TAX PROVISIONS RE-**
2 **LATED TO LONG-TERM CARE**
3 **INSURANCE**

4 **SEC. 201. QUALIFIED LONG-TERM CARE INSURANCE TREATED**
5 **AS ACCIDENT AND HEALTH INSURANCE FOR**
6 **PURPOSES OF TAXATION OF LIFE INSURANCE**
7 **COMPANIES.**

8 (a) **IN GENERAL.**—Section 818 of the Internal Revenue
9 Code of 1986 (relating to other definitions and special rules)
10 is amended by adding at the end thereof the following new
11 subsection:

12 “(h) **QUALIFIED LONG-TERM CARE INSURANCE**
13 **TREATED AS ACCIDENT OR HEALTH INSURANCE.**—For
14 purposes of this part—

15 “(1) **IN GENERAL.**—Any reference to accident or
16 health insurance shall be treated as including a refer-
17 ence to qualified long-term care insurance.

18 “(2) **QUALIFIED LONG-TERM CARE INSUR-**
19 **ANCE.**—For purposes of this subsection—

20 “(A) **IN GENERAL.**—Subject to subpara-
21 graphs (B) and (C), the term ‘qualified long-term
22 care insurance’ means insurance under a policy or
23 rider, issued by a qualified issuer, and certified by
24 the Secretary of Health and Human Services (in
25 accordance with procedures similar to the proce-

1 dures prescribed in section 1882 of the Social Se-
2 curity Act (42 U.S.C. 1385ss) used in the certifi-
3 cation of medicare supplemental policies (as de-
4 fined in subsection (g)(1) of such section)) to be
5 advertised, marketed, offered, or designed to pro-
6 vide coverage—

7 “(i) for not less than 12 consecutive
8 months for each covered person who has at-
9 tained age 50,

10 “(ii) on an expense incurred, indemnity,
11 or prepaid basis,

12 “(iii) for 1 or more medically necessary,
13 diagnostic services, preventive services,
14 therapeutic services, rehabilitation services,
15 maintenance services, or personal care serv-
16 ices, and

17 “(iv) provided in a setting other than an
18 acute care unit of a hospital.

19 “(B) COVERAGE SPECIFICALLY EX-
20 CLUDED.—Such term does not include any insur-
21 ance under any policy or rider which is offered
22 primarily to provide any combination of the fol-
23 lowing kinds of coverage:

24 “(i) Basic Medicare supplement cover-
25 age.

1 “(ii) Basic hospital-based acute care ex-
2 pense coverage.

3 “(iii) Basic medical-surgical expense
4 coverage.

5 “(iv) Hospital confinement indemnity
6 coverage.

7 “(v) Major medical expense coverage.

8 “(vi) Disability income protection cover-
9 age.

10 “(vii) Accident only coverage.

11 “(viii) Specified disease coverage.

12 “(ix) Specified accident coverage.

13 “(x) Limited benefit health coverage.

14 “(C) REQUIREMENT FOR REINSURANCE.—If
15 the Federal National Long-Term Care Reinsur-
16 ance Corporation is incorporated as of January 1,
17 1990, effective on and after such date, such term
18 does not include any insurance unless, with re-
19 spect to such insurance, the qualified insurer is re-
20 insured by such Corporation.

21 “(D) QUALIFIED ISSUER.—For purposes of
22 subparagraph (A), the term ‘qualified issuer’
23 means any of the following:

24 “(i) Private insurance company.

25 “(ii) Fraternal benefit society.

1 “(iii) Nonprofit health corporation.

2 “(iv) Nonprofit hospital corporation.

3 “(v) Nonprofit medical service corpora-
4 tion.

5 “(vi) Prepaid health plan.”

6 (b) EFFECTIVE DATE.—The amendment made by sub-
7 section (a) shall apply to taxable years beginning after De-
8 cember 31, 1987.

9 SEC. 202. QUALIFIED LONG-TERM CARE INSURANCE TREATED
10 AS ACCIDENT AND HEALTH INSURANCE FOR
11 PURPOSES OF EXCLUSION FOR BENEFITS RE-
12 CEIVED UNDER SUCH INSURANCE AND FOR EM-
13 PLOYER CONTRIBUTIONS FOR SUCH INSUR-
14 ANCE.

15 (a) IN GENERAL.—Section 105 of the Internal Revenue
16 Code of 1986 (relating to amounts received under accident
17 and health plans) is amended by adding at the end thereof the
18 following new subsection:

19 “(j) SPECIAL RULES RELATING TO QUALIFIED LONG-
20 TERM CARE INSURANCE.—For purposes of section 104, this
21 section, and section 106—

22 “(1) BENEFITS TREATED AS PAYABLE FOR SICK-
23 NESS, ETC.—Any benefit received through qualified
24 long-term care insurance (as defined in section 818(h))

1 shall be treated as received for personal injuries or
2 sickness.

3 “(2) EXPENSES FOR WHICH REIMBURSEMENT
4 PROVIDED UNDER QUALIFIED LONG-TERM CARE IN-
5 SURANCE TREATED AS INCURRED FOR MEDICAL
6 CARE.—Expenses incurred by a taxpayer for which re-
7 imbursement is paid through qualified long-term care
8 insurance (as so defined) shall be treated for purposes
9 of subsection (b) as incurred for medical care (as de-
10 fined in section 213(d)).

11 “(3) REFERENCES TO ACCIDENT AND HEALTH
12 PLANS.—Any reference to an accident or health plan
13 shall be treated as including a reference to a plan pro-
14 viding qualified long-term care insurance.”

15 (b) EFFECTIVE DATE.—The amendment made by sub-
16 section (a) shall apply to taxable years beginning after
17 December 31, 1987.

18 SEC. 203. EXCLUSION FROM GROSS INCOME FOR AMOUNTS
19 WITHDRAWN FROM INDIVIDUAL RETIREMENT
20 PLANS FOR QUALIFIED LONG-TERM CARE
21 INSURANCE.

22 (a) IN GENERAL.—Subsection (d) of section 408 of the
23 Internal Revenue Code of 1936 (relating to tax treatment of
24 distributions from individual retirement plans) is amended by
25 adding at the end thereof the following new paragraph:

1 “(7) DISTRIBUTIONS FOR QUALIFIED LONG-TERM
2 CARE INSURANCE PREMIUMS.—The portion of a dis-
3 tribution which (but for this paragraph) would be in-
4 cludible in the gross income of the payee or distributee
5 under paragraph (1) shall not be included in gross
6 income during the taxable year if—

7 “(A) the payee or distributee has attained
8 age 59½ on or before the date of the distribution,
9 and

10 “(B) such portion is used during such year to
11 pay premiums for any policy of qualified long-term
12 care insurance (as defined in section 818(h)) for
13 the benefit of the payee or distributee or the
14 spouse of the payee or distributee if such spouse
15 has attained age 59½ on or before the date of the
16 distribution.”

17 (b) EFFECTIVE DATE.—The amendment made by sub-
18 section (a) shall apply to taxable years beginning after De-
19 cember 31, 1987.

1 SEC. 204. EXCLUSION FROM GROSS INCOME FOR AMOUNTS ON
2 THE SURRENDER OR CANCELLATION OF ANY
3 LIFE INSURANCE POLICY WHICH ARE USED TO
4 PAY PREMIUMS FOR QUALIFIED LONG-TERM
5 CARE INSURANCE.

6 (a) IN GENERAL.—Part III of subchapter B of chapter
7 1 of the Internal Revenue Code of 1986 (relating to items
8 specifically excluded from gross income) is amended by redes-
9 ignating section 135 as section 136 and by inserting after
10 section 134 the following new section:

11 “SEC. 135. AMOUNTS RECEIVED ON CANCELLATION, ETC. OF
12 LIFE INSURANCE CONTRACTS AND USED TO
13 PAY PREMIUMS FOR QUALIFIED LONG-TERM
14 CARE INSURANCE.

15 “No amount (which but for this section would be includ-
16 ible in the gross income of an individual) shall be included in
17 gross income on the whole or partial surrender, cancellation,
18 or exchange of any life insurance contract during the taxable
19 year if—

20 “(1) such individual has attained age 65 on or
21 before the date of the transaction, and

22 “(2) the amount otherwise includible in gross
23 income is used during such year to pay premiums for
24 any policy of qualified long-term care insurance (as de-
25 fined in section 818(h)) for the benefit of such individ-
26 ual or the spouse of such individual if such spouse has

1 attained age 65 on or before the date of the transac-
2 tion.”

3 (b) CLERICAL AMENDMENT.—The table of sections for
4 such part III is amended by striking out the last item and
5 inserting in lieu thereof the following new items:

“Sec. 135. Amounts received on cancellation, etc. of life insurance
contracts and used to pay premiums for qualified long-
term care insurance.

“Sec. 136. Cross references to other Acts.”

6 (c) EFFECTIVE DATE.—The amendments made by this
7 section shall apply to taxable years beginning after Decem-
8 ber 31, 1987.

9 **TITLE III—FEDERAL NATIONAL**
10 **LONG-TERM CARE REINSUR-**
11 **ANCE CORPORATION.**

12 **SEC. 301. SHORT TITLE.**

13 This title may be cited as the “Federal National Long-
14 Term Care Reinsurance Corporation Act”.

15 **SEC. 302. AUTHORIZATION FOR ESTABLISHMENT OF CORPO-**
16 **RATION.**

17 The Secretary of Health and Human Services (in this
18 title referred to as the “Secretary”) is authorized to provide,
19 in accordance with this title, for the incorporation of a corpo-
20 ration, to be known as the Federal National Long-Term Care
21 Reinsurance Corporation (in this title referred to as the “Cor-
22 poration”), which shall not be an agency or establishment of
23 the United States Government.

1 SEC. 303. BOARD OF DIRECTORS AND OFFICERS.

2 (a) BOARD OF DIRECTORS.—The Corporation shall
3 have a Board of Directors (in this title referred to as the
4 “Board”) consisting of 9 members, of which—

5 (1) 3 shall be appointed by the President of the
6 United States, of which one shall be a representative
7 of entities providing long-term care, one shall be a rep-
8 resentative from an insurer, and one shall be a repre-
9 sentative of consumers of long-term care; and

10 (2) 6 shall be elected annually by the stockholders
11 of the Corporation entitled to vote for such members.

12 Within the limitations of law and regulation, the Board shall
13 determine the general policies which shall govern the oper-
14 ations of the Corporation, and shall have power to adopt,
15 amend, and repeal by-laws governing the performance of the
16 powers and duties granted to or imposed upon it by law.

17 (b) INITIAL BOARD.—Notwithstanding subsection (a),
18 the members described in subsection (a)(1) shall serve as in-
19 corporators and are authorized to assist the Secretary in
20 taking whatever actions are necessary to incorporate the
21 Corporation.

22 (c) TERMS OF OFFICE.—The terms of office of each
23 member of the Board shall be one year, expiring on the date
24 of the annual meeting of the stockholders of the Corporation;
25 except that (A) in the case of a vacancy occurring prior to the
26 expiration of the term of a member, the vacancy shall be

1 filled by the President (for members described in subsection
2 (a)(1)) or by the remaining members of the Board (for other
3 members) for the remainder of such term, and (2) any
4 member may be removed by the President for good cause.
5 Any vacancy in the Board shall not affect its power.

6 (d) CHAIRMAN.—The President shall designate one of
7 the members described in subsection (a)(1) as the initial
8 Chairman of the Board. Thereafter, the members of the
9 Boards shall annually elect one of their number as Chairman.

10 (e) TREATMENT OF MEMBERS.—(1) The members of
11 the Board shall not, by reason of such membership, be
12 deemed to be employees of the United States Government.
13 Except as provided in paragraph (2), each member of the
14 Board shall be entitled to receive the daily equivalent of the
15 maximum annual rate of basic pay in effect for grade GS-18
16 of the General Schedule for each day (including travel time)
17 during which he is engaged in the actual performance of
18 duties vested in the Corporation.

19 (2) Members of the Board who are full-time officers or
20 employees of the United States shall receive no additional
21 pay by reason of their service on the Board.

22 (f) OFFICERS.—The Corporation shall have a President
23 and such other executive officers and employees as may be
24 appointed by the Board at rates of compensation fixed by the
25 Board, without regard to any provisions of title 5, United

1 States Code. No such executive officer may receive any
2 salary or other compensation from any source other than the
3 Corporation during the period of his employment by the
4 Corporation.

5 **SEC. 304. PURPOSE AND AUTHORITY OF CORPORATION.**

6 (a) **PURPOSE.**—The Corporation shall confine its activi-
7 ties to providing for the reinsurance of insurance companies
8 for extraordinary loss in the issuance or payment of benefits
9 for qualified long-term care insurance (as defined in subpara-
10 graph (A) of section 818(h)(2) of the Internal Revenue Code
11 of 1986). Except as may be provided by the Secretary in
12 regulations, the Corporation may not refuse to provide for
13 such reinsurance for any insurance meeting the requirements
14 of such section (other than subparagraph (C) thereof).

15 (b) **PREMIUMS.**—The Corporation shall impose for such
16 reinsurance reasonable premiums which—

17 (1) are related to actuarial estimates of the type
18 and amount of financial risk assumed by the Corpora-
19 tion, and

20 (2) in the aggregate (in conjunction with other
21 income which the Corporation may have) provide for
22 all the expenses of the Corporation.

23 (c) **NO POLITICAL CONTRIBUTIONS.**—The Corporation
24 shall not contribute or otherwise support any political party
25 or candidate for elective public office.

1 (d) GENERAL POWERS.—Except as otherwise specifi-
2 cally provided in this title, the Corporation and Board shall
3 have the powers of a corporation and board of directors in the
4 State in which incorporated.

5 SEC. 305. CAPITALIZATION.

6 (a) COMMON STOCK.—The Corporation shall have
7 common stock, with such par value as the Board establishes,
8 which shall be vested with all voting rights, each share being
9 entitled to one vote with rights of cumulative voting at all
10 elections of directors. The free transferability of the common
11 stock at all times to any person, firm, corporation, or other
12 entity shall not be restricted, except that, as to the Corpora-
13 tion, it shall be transferable only on the books of the Corpora-
14 tion. The Corporation shall only issue such common stock
15 with the approval of the Secretary.

16 (b) DEBT.—(1) For purposes of carrying out this title,
17 the Corporation may, with the approval of the Secretary,
18 issue obligations having such maturities and bearing such
19 rate or rates and having such conditions (including subordina-
20 tion to other such obligations) as the Board determines to be
21 appropriate.

22 (2) The full faith and credit of the United States is not
23 pledged to the obligations and debts of the Corporation. The
24 Corporation shall insert appropriate language in all of its ob-
25 ligations issued under this subsection clearly indicating that

1 such obligations, together with the interest thereon, are not
2 guaranteed by the United States and do not constitute debt
3 or obligation of the United States or of any agency or instru-
4 mentality thereof. The Corporation may purchase in the open
5 market any of its obligations outstanding under this subsec-
6 tion at any time and at any price.

7 (3) All obligations, participations, or other instruments
8 issued by the Corporation shall be lawful investments, and
9 may be accepted as security for all fiduciary, trust, and public
10 funds, the investment or deposit of which shall be under the
11 authority and control of the United States or any officer or
12 officers thereof.

13 SEC. 306. EXEMPTION FROM STATE REGULATION AND
14 TAXATION.

15 (a) TAXATION.—The Corporation, including its capital,
16 reserves, surplus, security holdings, and income, shall be
17 exempt from all taxation now or hereafter imposed by any
18 State, District, Commonwealth, county, municipality, or
19 local taxing authority, except that any real property of the
20 Corporation shall be subject to such taxation to the same
21 extent according to its value as other real property is taxed.

22 (b) INSURANCE REGULATION.—Except to the extent
23 specified by the Secretary in regulations, the Corporation
24 shall not be subject to regulation under the insurance laws of
25 any State, District, or Commonwealth.

1 SEC. 307. AUDIT AND ANNUAL REPORT.

2 (a) AUDIT.—The Board shall provide for an annual
3 audit of the operations of the Corporation. Such audit shall
4 be conducted by a certified public accountant in accordance
5 with generally accepted auditing principles (as recognized by
6 the Comptroller General).

7 (b) ANNUAL REPORT.—The Board shall report annual-
8 ly to the President and the Congress on the activities of the
9 Corporation. Such report shall include a presentation of the
10 financial status of the Corporation, as certified under the
11 audit described in subsection (a).

12 SEC. 308. PROTECTION OF NAME.

13 No individual association, partnership, or corporation,
14 except the Corporation, shall hereafter use the word “Feder-
15 al National Long-Term Care Reinsurance Corporation”, or
16 any combination of such words, as the name or a part thereof
17 under which he or it shall do business. Violations of the fore-
18 going sentence may be enjoined by any court of general juris-
19 diction at the suit of the Corporation. In any such suit, the
20 Corporation may recover any actual damages flowing from
21 such violations, and, in addition, shall be entitled to punitive
22 damages (regardless of the existence or nonexistence of
23 actual damages) of not exceeding \$10,000 for each day
24 during which such violation is committed or repeated.



CMS Library

CMS Library

CMS Library
C2-07-13
7500 Security Blvd.
Baltimore, Maryland 21244

CMS LIBRARY



3 8095 00009433 0